



9110-04-P

## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

### **Docket Number USCG-2018-0598**

### **RIN 1625-AA00**

### **Safety Zone, Swim Around Charleston; Charleston, SC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary moving safety zone during the Swim Around Charleston, a swimming race occurring on the Wando River, the Cooper River, Charleston Harbor, and the Ashley River, in Charleston, South Carolina. The temporary moving safety zone is necessary to protect swimmers, participant vessels, spectators, and the general public during the event. Persons and vessels would be prohibited from entering the safety zone unless authorized by the Captain of the Port Charleston or a designated representative. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2018-0598 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rulemaking, call or email Lieutenant Justin Heck, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843) 740-3184, e-mail Justin.C.Heck@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code
COTP	Captain of the Port

**II. Background, Purpose, and Legal Basis**

On April 9, 2018, Kathleen Wilson notified the Coast Guard that she will be sponsoring the Swim Around Charleston on September 16, 2018 and would impact waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina. The legal basis for the proposed rule is the Coast Guard's authority to establish a safety zone is 33 U.S.C. 1231. The purpose of the proposed rule is to ensure safety of life on the navigable waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during Swim Around Charleston.

**III. Discussion of Proposed Rule**

The COTP proposes to establish a temporary safety zone on the waters of the Wando River, Cooper River, Charleston Harbor, and Ashley River, in Charleston, South Carolina during Swim Around Charleston from 7:45 a.m. to 2 p.m. on September 16, 2018. Approximately 100 swimmers are anticipated to participate in the race. Persons and vessels desiring to enter, transit

through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843) 740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative. The COTP will provide notice of the safety zone by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on: (1) the safety zone would be enforced for only seven hours; (2) the safety zone would move with the participant vessels so that once the swimmers clear a portion of the waterway, the safety zone would no longer be enforced in that portion of the waterway; (3) although persons and vessels would not be able to enter or transit

through the safety zone without authorization from the COTP or a designated representative, they would be able to operate in the surrounding area during the enforcement period; (4) persons and vessels would still be able to enter or transit through the safety zone if authorized by the COTP or a designated representative; and (5) the COTP would provide advance notification of the safety zone to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

We have considered the impact of this proposed rule on small entities. This rule may affect the following entities, some of which may be small entities: the owner or operators of vessels intending to enter, transit through, anchor in, or remain within the regulated area during the enforcement period. For the reasons stated in section IV.A. above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER**

**INFORMATION CONTACT** section.

*E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

*F. Environment*

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves a safety zone lasting less than seven hours that would prohibit entry within the safety zone. Normally such actions are categorically excluded from further review under paragraph L 60(a) of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 01. A preliminary Record of Environmental Consideration supporting this determination is available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

*G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

## **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacyNotice>.

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements,

Security measures, Waterways. For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

## **PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T07–0598 to read as follows:

§ 100.T07-0598 Safety Zone; Swim Around Charleston, Charleston, SC.

(a) Regulated area. The following regulated area is a moving safety zone: all waters 50 yards in front of the lead safety vessel preceding the first race participants, 50 yards behind the safety vessel trailing the last race participants, and at all times extend 100 yards on either side of safety vessels. The Swim Around Charleston swimming race consists of a 12 mile course that starts at Remley’s Point on the Wando River in approximate position 32°48’49”N, 79°54’27”W, crosses the main shipping channel under the main span of the Ravenel Bridge, and finishes at the I-526 bridge and boat landing on the Ashley River in approximate position 32°50’14”N, 80°01’23”W. All coordinates are North American Datum 1983.

(b) Definition. As used in this section, “designated representative” means Coast Guard Patrol Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the COTP in the enforcement of the regulated areas.

(c) Regulations. (1) All persons and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area, except persons and vessels participating in the Swim Around Charleston, or serving as safety vessels.



(2) Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the COTP by telephone at (843)740-7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted, all persons and vessels receiving such authorization must comply with the instructions of the COTP or a designated representative.

(3) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) Enforcement period. This rule will be enforced on September 16, 2018 from 7:45 a.m. until 2 p.m.

Dated: June 20, 2018

J. W. Reed,  
Captain, U.S. Coast Guard,  
Captain of the Port Charleston

[FR Doc. 2018-13679 Filed: 6/25/2018 8:45 am; Publication Date: 6/26/2018]